IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7998 OF 2004.

Nikhilkumar Amrutlal Shah. .... Petitioner.

versu.

Smt.Al;pa Nikhilkumar Shah. .... Respondent.

Shri Hiranandani Shri C.G.Gavnekar for the Petitioner.

Shri M.S.Lagu for Shri N.R.Bubna for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 9th December, 2004.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. Rule returnable forthwith. The learned Counsel for the Respondent waives service. By consent taken up for final hearing forthwith.

3. The Petitioner is the Respondent in a petition filed by the Plaintiff/Respondent. The petition was filed after coming into force of the amendment to the Code of Civil Procedure, 1908. The said amendment came into force on 1st July 2002.

4. On 18th September 2003, the Petitioner made an application and tendered his Written Statement along with the said application. The said application was rejected by the trial Court in view of the law laid down in the

case of Iridium India Telecom Ltd. v/s. Motorola Inc. reported in 2004(1) Mah.L.J. page 532. Thereafter on 23rd June 2004, the Petitioner filed an application at Exh.19 again praying for condonation of delay in filing the Written Statement and for taking the Written Statement on record. The said Application is rejected by the impugned order dated 10th August 2004.

5. The learned Counsel for the Petitioner submitted that in view of the law laid down by the Division Bench in the case of Chintaman Sukhdeo Kakji and otrhers v/s.Shivaji Bhausaheb Godhe and others, reported in 2004 (5) Bom.C.R. page 573 amended provisions of Order VIII have been interpreted and it has been held that the Civil Court has discretion to extend the statutory period for filing the Written Statement in case of exceptional case being made out. The learned Counsel for the Petitioner submitted that the Written Statement was tendered on 13th October 2003 itself. The Petitioner is a resident of Indore and therefore, within the period stipulated by Order VIII of the Code, the Written Statement could not be filed.

6. Shri Lagu, the learned Counsel appearing for the Respondent submitted that the Petitioner has not challenged the earlier order passed on Application dated 18th September 2003 and therefore, the fresh Application was not maintainable.

7. The Code of Civil Procedure is essentially a law governing the procedure. In this case, the Petitioner did tender his Written Statement on 13th October 2003. However, relief was not granted in his favour considering the Judgment of this Court in the case of Iridium India Telecome Ltd. (supra). Now the law is very clear. The trial Court has discretion to extend the time in exceptional cases.

8. The present case arises out of a dispute between the husband and wife. The Matrimonial Petition was filed on 24th March 2003. As stated earlier the same was filed in the Civil Court at Malegaon. The Petitioner is a resident of Indore. Considering the fact that the Petitioner has tendered the Written Statement along with the Application dated 18th September 2003, in my view, this was a fit case where the Court should have exercised discretion and allowed filing of the Written Statement. However, it is to be noted that the Respondent-wife has suffered some prejudice which will have to be compensated by ordering payment of costs.

9. Hence I pass he following order:

(i) The impugned order dated 10th August 2004 is quashed and set aside.

(ii) The Application at Exh.19 made by the

Petitioner is allowed subject to condition of payment of costs to the Respondent quantified at Rs.3000/- within a period of six weeks from today.

(iii) If the amount of costs is not accepted by the Respondent, the Petitioner is free to deposit the said amount in the trial Court. It is made clear that the amount of costs is not paid or deposited within the stipulated time, the impugned order will stand.

(iv) Rule is made absolute in the above terms.

(v) Parties and the concerned Court to act on the authenticated copy of this order.

Judge.